

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CAROLE N.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 2:19-CV-1661-DWC

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant's denial of Plaintiff's applications for supplemental security income ("SSI") and disability insurance benefits ("DIB"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

After considering the record, the Court concludes the Administrative Law Judge ("ALJ") erred when she improperly evaluated the opinions of Drs. Holly Petaja, Alesha Bailey, and Nikki Johnson. As the ALJ's error is not harmless this matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner of the Social Security Administration ("Commissioner") for further proceedings consistent with this Order.

FACTUAL AND PROCEDURAL HISTORY

On November 15, 2016, Plaintiff filed applications for DIB and SSI, alleging disability as of March 11, 2016. *See* Dkt. 8, Administrative Record (“AR”) 15. The application was denied upon initial administrative review and on reconsideration. *See* AR 15. A hearing was held before ALJ Stephanie Martz on September 4, 2018. *See* AR 14. In a decision dated October 3, 2018, the ALJ determined Plaintiff to be not disabled. *See* AR 24. Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals Council, making the ALJ’s decision the final decision of the Commissioner. *See* 20 C.F.R. § 404.981, § 416.1481.

In the Opening Brief, Plaintiff maintains the ALJ erred by improperly: (1) evaluating the medical opinion evidence; and (2) evaluating Plaintiff’s testimony. Dkt. 10.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits if the ALJ’s findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

DISCUSSION

**I. Whether the ALJ properly considered the medical opinion evidence.**

Plaintiff asserts the ALJ improperly evaluated the opinions of Drs. Petaja, Bailey, and Johnson. Dkt. 10, pp. 3-10.

In assessing an acceptable medical source, an ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). When a treating or examining

physician's opinion is contradicted, the opinion can be rejected "for specific and legitimate reasons that are supported by substantial evidence in the record." *Lester*, 81 F.3d at 830-831 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983). The ALJ can accomplish this by "setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

#### A. Dr. Petaja

Dr. Petaja completed a psychological evaluation of Plaintiff for the Washington State Department of Social and Health Services ("DSHS") in October 2016. AR 425-429. Dr. Petaja conducted a clinical interview and a mental status examination ("MSE") of Plaintiff and diagnosed her with major depressive disorder, recurrent, severe without psychotic features, and unspecified anxiety disorder. AR 427. She found Plaintiff was severely limited in maintaining appropriate behavior in a work setting and in completing a normal work day and work week without interruptions from psychologically based symptoms. AR 427. Dr. Petaja also opined Plaintiff was markedly limited in understanding, remembering, and persisting in tasks by following detailed instructions, performing activities within a schedule, maintaining regular attendance, and being punctual within customary tolerances without special supervision, and in communicating and performing effectively in a work setting. AR 427.

The ALJ discussed Dr. Petaja's opinion and discounted it, saying:

(1) Dr. Petaja reviewed no records. (2) Her opinion is inconsistent with the medical evidence. (3) After this evaluation, the claimant had her medications adjusted and her symptoms improved. (4) She stopped seeing mental health providers in February 2017, which indicates she was stable at that time.

AR 21 (numbering added).

1 First, the ALJ discounted Dr. Petaja's opinion because she "reviewed no records." AR 21.  
2 The ALJ failed to explain why Dr. Petaja's failure to review records discredits her opinion. *See* AR  
3 21. Defendant does not cite, nor does the Court find, authority holding an examining physician's  
4 failure to supplement his or her own examination and observations with additional records is a  
5 specific and legitimate reason to give less weight to the opinion. Accordingly, the ALJ's first reason  
6 for discounting Dr. Petaja's opinion is not specific and legitimate and supported by substantial  
7 evidence.

8 Second, the ALJ discounted Dr. Petaja's opinion because it is inconsistent with the medical  
9 opinion evidence. AR 21. An ALJ need not accept the opinion of a treating physician if that opinion  
10 is inadequately supported "by the record as a whole." *See Batson v. Commissioner of Social Security*  
11 *Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). But a conclusory statement finding an opinion is  
12 inconsistent with the overall record is insufficient to reject the opinion. *See Embrey*, 849 F.2d 418 at  
13 421-422. Here, the ALJ doesn't specify which limitations Dr. Petaja assessed are inconsistent by the  
14 medical evidence, nor does she provide any analysis to support her conclusion. Without providing  
15 more analysis, the ALJ's reasoning is, by definition, conclusory. *See Hess v. Colvin*, No. 14-8103,  
16 2016 WL 1170875, at \*3 (C.D. Cal. Mar. 24, 2016) (an ALJ merely offers her conclusion when his  
17 statement "stands alone, without any supporting facts"). Thus, the ALJ's second reason for  
18 discounting Dr. Petaja's opinion is not specific and legitimate and supported by substantial evidence.  
19 *See Garrison v. Colvin*, 759 F.3d 995, 1012-1013 (9th Cir. 2014) ("an ALJ errs when [s]he rejects a  
20 medical opinion or assigns it little weight while doing nothing more than ... criticizing it with  
21 boilerplate language that fails to offer a substantive basis for [her] conclusion").

22 Third, the ALJ discounted Dr. Petaja's opinion because her symptoms improved with  
23 medication. AR 21. "Impairments that can be controlled effectively with medication are not disabling  
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1 for the purpose of determining eligibility for [disability] benefits.” *Warre v. Comm’r of the SSA*, 439  
2 F.3d 1001, 1006 (9th Cir. 2006). But because “[c]ycles of improvement and debilitating symptoms  
3 are a common occurrence” regarding mental health issues, “it is error for an ALJ to pick out a few  
4 isolated instances of improvement over a period of months or years and to treat them as a basis for  
5 concluding a claimant is capable of working.” *Garrison*, 759 F.3d at 1017. Here, the record indicates  
6 Plaintiff’s depression waxed and waned in the course of treatment. For example, in November 2016,  
7 Plaintiff’s mental health provider noted Plaintiff was anxious, tearful, irritable, and depressed. AR  
8 400. In March 2017, Plaintiff reported increased symptoms due to her depression. AR 651. In  
9 September 2017, Plaintiff reported an improvement in her depression. AR 637. One month later,  
10 Plaintiff told her mental health provider her depression symptoms were “way up and down.” AR  
11 629. Plaintiff exhibited depressive symptoms in May 2018 and July 2018. AR 589, 603. Thus, the  
12 ALJ appears to have selectively identified a few isolated instances of improvement to support her  
13 decision to discount Dr. Petaja’s opinion. Accordingly, the ALJ’s third reason for discounting Dr.  
14 Petaja’s opinion is not specific and legitimate and supported by substantial evidence.

15 Fourth, the ALJ discounted Dr. Petaja’s opinion because Plaintiff stopped seeing mental  
16 health providers in February 2017, which the ALJ interpreted as evidence that Plaintiff was stable at  
17 that time. AR 21. As discussed above, it is common for mental health symptoms to go through  
18 “[c]ycles of improvement and debilitating symptoms[.]” *Garrison*, 759 F.3d at 1017. Further, merely  
19 because “a person who suffers from ... depression makes some improvement does not mean that the  
20 person’s impairments no longer seriously affect her ability to function in a workplace.” *Holohan v.*  
21 *Massanari*, 246 F.3d 1195, 1205 (9th Cir.2001). Moreover, the ALJ’s correlation that Plaintiff is  
22 stable because she stopped seeing mental health providers in February 2017 is made without analysis  
23 and is therefore speculative, and an ALJ may not speculate. *See* Social Security Ruling (“SSR”) 86-8,

1 1986 SSR LEXIS 15 at \*22. Accordingly, the ALJ's fourth reason for discounting Dr. Petaja's  
2 opinion is not specific and legitimate and supported by substantial evidence.

3 For the above stated reasons, the Court finds the ALJ failed to provide specific and legitimate  
4 reasons supported by substantial evidence for discounting Dr. Petaja's opinion. Accordingly, the ALJ  
5 erred.

6 "[H]armless error principles apply in the Social Security context." *Molina v. Astrue*, 674  
7 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial to the  
8 claimant or "inconsequential" to the ALJ's "ultimate nondisability determination." *Stout v.*  
9 *Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674 F.3d at  
10 1115. The determination as to whether an error is harmless requires a "case-specific application of  
11 judgment" by the reviewing court, based on an examination of the record made "without regard to  
12 errors' that do not affect the parties' 'substantial rights.'" *Molina*, 674 F.3d at 1118-1119 (*quoting*  
13 *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)).

14 Had the ALJ given great weight to Dr. Petaja's opinion, the ALJ may have included  
15 additional limitations in the residual functional capacity ("RFC"). For example, Dr. Petaja opined  
16 Plaintiff was severely limited in completing a normal work day and work week without interruptions  
17 from psychologically based symptoms. AR 427. In contrast, in the RFC, the ALJ did not include any  
18 limitations regarding absenteeism. *See* AR 19. Therefore, if Dr. Petaja's opinion was given great  
19 weight and additional limitations were included in the RFC and in the hypothetical questions posed  
20 to the vocational expert ("VE"), the ultimate disability determination may have changed.

21 Accordingly, the ALJ's errors are not harmless and require reversal. The ALJ is directed to reassess  
22 Dr. Petaja's opinion on remand.

1       B. Drs. Bailey and Johnson

2       Drs. Bailey and Johnson each conducted a psychological evaluation of Plaintiff and  
3 completed DSHS forms (“Joint Opinion”). AR 576-580, 672-677. Both doctors completed a clinical  
4 interview and MSE of Plaintiff. *See* AR 576-580, 672-677. They diagnosed Plaintiff with depression  
5 and opined to several marked and severe limitations, including a severe limitation in completing a  
6 normal work day and work week without interruptions from psychologically based symptoms. AR  
7 579.

8       The ALJ discounted the Joint Opinion for three reasons:

9       (1) [O]verall, these evaluations are not consistent with the longitudinal record. (2) She  
10       had an increase in depression after trying to work in 2018. She told the evaluators she  
11       had loss of motivation and spent most of the day crying. (3) However, counseling notes  
12       show that she was doing more including fixing up her daughter’s room and taking a  
13       trip to Yakima as discussed.

14       AR 21 (citations omitted) (numbering added).

15       First, the ALJ discounted the Joint Opinion because it is not consistent with the longitudinal  
16       record. AR 21. An ALJ may discount a physician’s opinion if the opinion is inadequately supported  
17       “by the record as a whole.” *See Batson*, 359 F.3d at 1195. But a conclusory statement finding an  
18       opinion is inconsistent with the overall record is insufficient to reject the opinion. *See Embrey*, 849  
19       F.2d 418 at 421-422. Here, the ALJ doesn’t specify which limitations in the Joint Opinion are  
20       inconsistent with the medical evidence, nor does she provide any analysis to support her conclusion.  
21       Without providing more analysis, the ALJ’s reasoning is, by definition, conclusory. *See Hess*, No.  
22       14–8103, 2016 WL 1170875, at \*3. Thus, the ALJ’s first reason for discounting the Joint Opinion is  
23       not specific and legitimate and supported by substantial evidence. *See Garrison*, 759 F.3d 995, 1012-  
24       1013.

1 Second, the ALJ discounted the Joint Opinion because Plaintiff's depression worsened after  
2 attempting to work in May 2018. AR 21. An ALJ may discount a doctor's opinion regarding a  
3 claimant's mental health impairments if the claimant's impairments are situational in nature. *See*  
4 *Dow v. Astrue*, 2010 WL 55659 at \*13 (S.D. Cal. Jan. 5, 2010) (affirming the ALJ's decision to  
5 reject the opinion of the claimant's treating physician because the physician's treatment notes "show  
6 [the claimant's] depression is more situational"). Although Plaintiff's depression may have worsened  
7 after trying to work in May 2018, the record indicates Plaintiff experienced mental health symptoms  
8 before and after attempting to work. For example, as discussed above, Plaintiff exhibited depressive  
9 symptoms in November 2016, March 2017, September 2017, October 2017, May 2018, and July  
10 2018. AR 400, 589, 603, 629, 651. Thus, the longitudinal record includes references which the ALJ  
11 did not discuss but could be interpreted to show that Plaintiff's depression is not solely due to  
12 situational stressors. The ALJ failed to discuss whether factors other than situational stressors could  
13 cause her depression. Accordingly, the ALJ's second reason for discounting the Joint Opinion is not  
14 specific and legitimate and supported by substantial evidence.

15 Third, the ALJ discounted the Joint Opinion because it is inconsistent with Plaintiff's  
16 activities of daily living. AR 21. Plaintiff's ability to fix up her daughter's room and take a trip to  
17 Yakima does not necessarily show she could "perform an eight-hour workday, five days per week, or  
18 an equivalent work schedule." *See* SSR 96-8p, 1996 WL 374184, at \*1. Moreover, the ALJ failed to  
19 explain how Plaintiff's ability to fix up her daughter's room and take a trip to Yakima shows she  
20 could sustain a full-time work schedule. *See Mulanax v. Comm'r of Soc. Sec. Admin.*, 293 Fed.  
21 Appx. 522, 523 (9th Cir. 2008) (citing SSR 96-8p) ("[g]enerally, in order to be eligible for disability  
22 benefits under the Social Security Act, the person must be unable to sustain full-time work – eight  
23 hours per day, five days per week"). In addition, a disability claimant "should not be penalized for  
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1 attempting to lead normal lives in the face of their limitations.” *Reddick*, 157 F.3d at 722.

2 Accordingly, the ALJ’s third reason for discounting the Joint Opinion is not specific and legitimate  
3 and supported by substantial evidence.

4 For the above stated reasons, the Court finds the ALJ failed to provide specific and legitimate  
5 reasons supported by substantial evidence for discounting the Joint Opinion. Accordingly, the ALJ is  
6 directed reassess the Joint Opinion on remand.

7 **II. Whether the ALJ properly evaluated Plaintiff’s testimony.**

8 Plaintiff asserts the ALJ failed to provide clear and convincing reasons for rejecting  
9 Plaintiff’s testimony. Dkt. 10, pp. 10-15. The Court concludes the ALJ committed harmful error in  
10 assessing the opinions of Drs. Petaja, Bailey, and Johnson and must re-evaluate them on remand. *See*  
11 Section I, *supra*. Because Plaintiff will be able to present new evidence and new testimony on  
12 remand and because the ALJ’s reconsideration of the medical evidence may impact her assessment  
13 of Plaintiff’s testimony, the ALJ must reconsider Plaintiff’s testimony on remand.

14 CONCLUSION

15 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded  
16 Plaintiff was not disabled. Accordingly, Defendant’s decision to deny benefits is reversed and this  
17 matter is remanded for further administrative proceedings in accordance with the findings contained  
18 herein.

19 Dated this 1st day of July, 2020.

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22 David W. Christel  
23 United States Magistrate Judge  
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